

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

AMERICAN FAMILY MUTUAL)	
INSURANCE COMPANY, S.I.,)	
)	
Plaintiff,)	
)	
v.)	
)	
BRYAN PINSON,)	
)	
Serve at: 4533 Crestline Drive)	
St. Louis, MO 63129)	
)	Cause No.
SARAH PINSON,)	
)	
Serve at: 4533 Crestline Drive)	
St. Louis, MO 63129)	
)	
MICHAEL CRAIN,)	
)	
Serve at: 4517 Project Rd.)	
Luebbering, MO 63061)	
)	
ANNETTE CRAIN,)	
)	
Serve at: 4517 Project Rd.)	
Luebbering, MO 63061)	

COMPLAINT FOR DECLARATORY JUDGMENT – INSURANCE POLICY

COMES NOW Plaintiff American Family Mutual Insurance Company, S.I. (“American Family”) and for its cause of action against Defendants Bryan Pinson, Sarah Pinson, Michael Crain, and Annette Crain states and alleges as follows:

1. Plaintiff American Family is an insurance company incorporated under the laws of the State of Wisconsin, presently in good standing in the State of Missouri, and is lawfully engaged in the insurance business in the State of Missouri.

2. Plaintiff American Family's principal place of business is located in the State of Wisconsin at 6000 American Parkway, Madison, Wisconsin 53783.

3. Upon information and belief, Defendants Bryan and Sarah Pinson are citizens of Missouri, and reside at 4533 Crestline Drive, St. Louis, Missouri 63129.

4. Upon information and belief, Defendants Michael and Annette Crain are citizens of Missouri, and reside at 4517 Project Road, Luebbering, Missouri 63061.

5. Since Plaintiff American Family is a citizen of Wisconsin and Defendants Bryan Pinson, Sarah Pinson, Michael Crain, and Annette Crain are citizens of Missouri, diversity jurisdiction exists in this case.

6. There is a current case and controversy between the parties to this action. This Complaint for Declaratory Judgment is initiated pursuant to Rule 57 and the Federal Declaratory Judgment Act, codified at 28 U.S.C. § 2201, to obtain a declaration of American Family Mutual Insurance Company's legal obligations under an insurance policy issued to Defendants Michael Crain and Annette Crain.

7. This Court has original jurisdiction over this matter under 28 U.S.C. § 1332(a) because it is a civil action between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

8. Venue is proper in the United States District Court for the Eastern District of Missouri under 28 U.S.C. § 1391(b)(1) and Local Rule 3-2.07 because Defendants resides within the Eastern Division of the Eastern District of Missouri. Further, venue is proper in the Eastern Division of the Eastern District of Missouri because a substantial part of the events or omissions giving rise to the claim occurred in St. Louis County, Missouri.

9. That under a policy of homeowners insurance known as Policy No. 24RK5551-01 (“Policy”), American Family insured Defendants Michael Crain and Annette Crain, providing liability coverage in the amount of \$300,000 under the terms, conditions, and endorsements as contained within said Policy. Said Policy had policy period effective dates of January 16, 2016 to June 2, 2016. A copy of said Policy is attached as Exhibit 1 and incorporated by reference.

10. That Defendants Bryan Pinson and Sarah Pinson are Plaintiffs in litigation known as *Bryan Pinson, et. ux. V. Michael Crain, et. ux.*, Case No. 17SL-CC03835, filed in the Circuit Court of St. Louis County, Missouri. A copy of the Petition is attached hereto, known as Exhibit 2, and incorporated herein by reference and is hereinafter known as “Litigation.”

11. That Defendants Michael Crain and Annette Crain are likewise defendants in litigation known as *Bryan Pinson, et. ux. V. Michael Crain, et. ux.*, Case No. 17SL-CC03835, filed in the Circuit Court of St. Louis County, Missouri. See Exhibit 2.

12. That within said underlying Litigation, Defendants Michael Crain and Annette Crain are subject to claims for fraudulent misrepresentation and negligent misrepresentation in connection with the sale of the Defendants’ St. Louis County home, to the underlying Plaintiffs.

13. That American Family has been called upon to provide indemnification and a defense to Defendants in said underlying Litigation.

14. That the Policy identified as Exhibit 1 contains the following relevant language:

DEFINITIONS

The following words in this policy have defined meanings. They will be printed in bold type.

1. Bodily injury means bodily harm, sickness or disease. It includes resulting loss of services, required care and death.

9. Occurrence means an accident, including exposure to conditions, which results during the policy period, in:

a. **bodily injury**; or

b. property damage.

Continuous or repeated exposure to substantially the same general harmful conditions is considered to be one **occurrence**.

11. Property damage means physical damage to or destruction of tangible property, including loss of use of this property. Loss of use of tangible property does not include any resulting loss of value of such damaged property.

LIABILITY COVERAGES – SECTION II

COVERAGE D – PERSONAL LIABILITY COVERAGE

We will pay, up to **our limit**, compensatory damages for which any **insured** is legally liable because of **bodily injury** or **property damage** caused by an **occurrence** covered by this policy.

Defense Provision.

If a suit is brought against any **insured** for damages because of **bodily injury** or **property damage** caused by an **occurrence** to which this policy applies, **we** will provide a defense at **our** expense by counsel of **our** choice. We will defend any suit or settle any claim for damages payable under this policy as we think proper.

OUR OBLIGATION TO DEFEND ANY CLAIM OR SUIT ENDS WHEN THE AMOUNT WE HAVE OFFERED OR PAID FOR DAMAGES RESULTING FROM THE OCCURRENCE EQUALS OUR LIMIT.

EXCLUSIONS – SECTION II

Coverage D – Personal Liability does not apply to:

1. Contractual Liability. We will not cover personal liability under any contract or agreement.

This exclusion does not apply to written contracts:

- a. directly relating to the ownership, maintenance or use of the **insured premises** not excluded in 2 below or elsewhere in this policy; or
- b. in which the insured assumes the liability of others prior to the occurrence.

3. Property Owned or Controlled. We will not cover **property damage** to:

- a. property owned by any **insured**;
- b. property borrowed, used or occupied by, rented to or in the care of any **insured**.

MISSOURI AMENDATORY HOMEOWNERS ENDORSEMENT

LIABILITY COVERAGES – SECTION II

EXCLUSIONS – SECTION II

The following applies to all policies:

Under:

Coverage D – Personal Liability and Coverage E – Medical Expense do not apply to: **Intentional Injury** is deleted and replaced by the following:

Expected or Intended. We will not cover **bodily injury** or **property damage** arising out an expected or intended act or omission.

- a. This includes any type of **bodily injury** or **property damage** that an **insured**:
 - (1) intends: or
 - (2) may expect to result from any intentional act or omission.
- b. This exclusion applies even if the **bodily injury** or **property damage** is:
 - (1) of a different kind, quality, or degree than intended;
 - (2) to a different person or property than intended;
 - (3) the result of a willful and malicious act, no matter at whom the act was directed;
 - (4) unexpected or unforeseen by the person injured or the owner of the property damaged; or
 - (5) sustained regardless of whether an **insured**:
 - (a) is under the influence of alcohol or any controlled substance;
 - (b) lacks the mental capacity to govern his or her conduct; or
 - (c) is deemed not to have had the mental capacity to form the legal intent to commit the act or omission.
- c. This exclusion applies regardless of the theory of relief pursued, asserted, or claimed by anyone seeking compensation under this policy.

Coverage D – Personal Liability does not apply to:

Punitive Damages is deleted and replaced by the following:

Punitive, Statutorily Imposed, or Court Ordered Damages. We will not cover punitive, statutorily imposed, or court ordered damages. This includes any Personal Liability for:

- a. punitive, exemplary, statutorily imposed, multiple, or aggravated damages;
- b. fines, penalties, or court ordered restitution; or
- c. awarded or statutorily mandated attorney fees related to a. or b. above.

15. That Policy No. 24RK5551-01 does not provide liability coverage for the allegations and damages asserted in the underlying litigation in that: (a) the loss set forth in the underlying Petition does not meet the definitions of “bodily injury” and “property damage”; (b) the loss set forth in the underlying Petition is specifically excluded by the Policy’s exclusions cited above; and (c) the Petition in the underlying litigation does not allege an occurrence as defined by the Policy.

16. That this court is empowered to declare the rights and obligations of Plaintiff American Family under the Policy; that Plaintiff American Family is entitled to judgment declaring that no coverage exists for any liability of Defendants Michael Crain and Annette Crain arising out of the action filed by the Underlying Plaintiffs against Defendants Michael Crain and Annette Crain as asserted in the underlying Litigation; that no coverage exists for any claims arising out of the underlying Litigation; that Plaintiff American Family is not liable under the policy previously identified as Exhibit 1 to Defendants Michael Crain and Annette Crain under the liability portions of said policy; and that Plaintiff American Family has no obligation to defend Defendants Michael Crain and Annette Crain in the underlying Litigation filed by the Underlying Plaintiff or in any other action arising out of the claims referenced in the underlying Litigation or that Plaintiff American Family has the duty to investigate, pay costs or expenses of Defendants Michael Crain and Annette Crain in any litigation or claim arising out of the circumstances previously set forth.

WHEREFORE, Plaintiff American Family Mutual Insurance Company, S.I., respectfully prays this Honorable Court issue its order declaring that no coverage exists under Policy No. 24RK5551-01 for any liability of Defendants Michael Crain and Annette Crain which may be found against Defendants Michael Crain and Annette Crain in any present or future claim or litigation arising out of the incidents more particularly described in the underlying Litigation known as *Bryan Pinson, et. ux. V. Michael Crain, et. ux.*, Case No. 17SL-CC03835, filed in the Circuit Court of St. Louis County, Missouri; that Plaintiff American Family Mutual Insurance Company, S.I. is not liable to Defendants Michael Crain and Annette Crain under the aforementioned insurance policy; that Plaintiff American Family Mutual Insurance Company, S.I. is not liable under the Policy previously identified to defend, investigate, pay costs or

expenses of Defendants Michael Crain and Annette Crain in any present or future claim or litigation filed by the Underlying Plaintiffs; and that Plaintiff American Family Mutual Insurance Company, S.I. further prays for its costs and attorneys' fees expended herein along with any such further orders this Honorable Court deems just and proper under the circumstances.

/s/Sean P. Dolan

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